

# OFFICE OF THE ATTORNEY GENERAL



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Honorable Pat Lindsey  
State Senator  
22nd District  
126 Mulberry Avenue  
Butler, Alabama 36904

State Employees - Teachers -  
Retirement - Sick Leave -  
Creditable Service

Section 36-26-36.1, Code of Alabama 1975, allows conversion of unused sick leave to retirement credit but does not require the State Personnel Board to allow the accrual of up to 180 days of sick leave.

Dear Senator Lindsey:

This opinion is issued in response to your request for an opinion from the Attorney General.

## QUESTION

Does § 36-26-36.1, Code of Alabama 1975, allow a State employee to apply up to 180 days of unused sick leave toward retirement and is the State Personnel Board and the Retirement Systems of Alabama bound by the provisions of this section?

## FACTS, LAW, AND ANALYSIS

Your request letter sets forth the background facts as follows:

"Last year the Alabama Legislature passed Act No. 91-617 which concerns conversion of unused sick leave into membership service by state employees for retirement purposes. That allows a state employee to use his accrued sick leave, up to a maximum number of 180 accrued sick leave days, or as otherwise allowed by law, whichever is greater, to be included as membership service in determining the total years of credible [sic] service in the Employees' Retirement System of Alabama."

Act No. 91-617 has now been codified as § 36-26-36.1, Code of Alabama 1975. Your explanation of the provisions of that Act is, I believe, correct and, indeed, it is a virtual, though incomplete, quotation of the explicit provisions of the Act. The statutory language seems reasonably clear. Any member of the Teachers' or Employees' Retirement System of Alabama not otherwise covered by a provision to convert unused sick leave into membership service for purpose of service retirement may, in lieu of receiving payment for his or her accrued and unused sick leave at the time of retirement, convert any accrued unused sick leave, up to a maximum of 180 days or as otherwise allowed by law, whichever is greater, to membership service in the Employees' or Teachers' Retirement System.

However, the statute only addresses how accrued sick leave may be used, i.e., that it may be converted to retirement credit. The statute does not provide for the accrual of sick leave. In addition to State employees, employees of most counties and cities and many other public entities in the state, participate in the Teachers' or Employees' Retirement System, and each employer has its own sick leave accrual policy. It is my understanding that the State Personnel Board does not now allow accrual of sick leave up to a maximum number of 180 days, and this statutory provision does not require it do do so.

Clearly under § 36-26-36.1, Code of Alabama 1975, an employee may only convert sick leave which he has been permitted to accrue under the personnel rules which apply to him or her.

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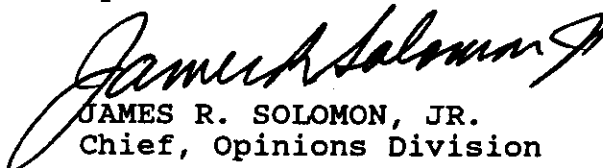
CONCLUSION

Section 36-26-36.1, Code of Alabama 1975, allows conversion of unused sick leave to retirement credit in lieu of the receipt of payment for such leave but does not require the State Personnel Board to allow the accrual of up to 180 days of sick leave.

I hope this sufficiently answers your question. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

JIMMY EVANS  
Attorney General  
By:



JAMES R. SOLOMON, JR.  
Chief, Opinions Division

JE/WTS/cw  
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